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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7661 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIWIBEN JAMAL ALI GOGDA

Versus

STATE OF GUJARAT

Appearance:

MR MD RANA for Petitioner

Ms. Vidhatri Parekh, ASSTT.GOVERNMENT PLEADER for Respondent No. 1

MR MG DOSHIT for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/06/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respsondents to implement the direction

given by this Court on 22nd January, 1986 in Second Appeal no. 323 of 1980 for promotion of the petitioner to the post of Taluka Development Officer and pay back wages and difference of salary and for a direction to comply with the direction issued by this Court in Second Appeal No. 323 of 1980 and further to fix the pension of the deceased petitioner in view of that fact that the petitioner had continued as a Taluka Development Officer since 1974 till he expired on 9.12.1986 and pay arrears of pension as if he has retired as Taluka Development Officer instead of pension fixed and given to the petitioner for the post of Oversear.

2. The petitioner worked as Incharge Taluka Development Officer and continued as such on account of the promotion which was given to him before he filed Regular Civil Suit no. 254 of 1974. The petitioner died on 9.12.1986. He had joined the Government service on 18.6.55 as an Oversear. In 1970, the District Panchayat, Rajkot awarded him Rs.101/- for saving the lives of people in flood. He was eligible for promotion to the post of Taluka Development Officer in the year 1969 on the basis of seniority cum merits. His juniors were promoted but the petitioner on account of some reasons was not given the promotion to the post of Taluka Development Officer. The petitioner also gave a notice under section 80 of Civil Procedure Code to the Government and other authorities on 27th July, 1974 claiming the promotion to the said post. The Development Commissioner passed some order on 18th September, 1974 granting promotion to other persons who were junior to the petitioner. Hence, the petitioner filed Regular Civil Suit no. 254 of 1974 in the Court of Civil Judge (S.D.), Gondal for a declaration and injunction. He also claimed interim injunction. The Civil Judge passed the order dated 7th March, 1975 granting the application for a direction to continue the petitioner as incharge Taluka Development Officer till the final decision of the suit. The trial court came to the conclusion that the impugned order dated 9th July, 1974 whereby the promotion of the petitioner to the post of Taluka Development Officer was withheld was void. The promotion or non-consideration of the case during the pendency of the inquiry or contemplated initiation of departmental inquiry proceedings amounts to imposition of punishment. Hence, the trial court ordered that the petitioner was entitled for being considered for promotion to the post of Taluka Development Officer and his case should be placed before the Selection committee for re-consideration and selection for promotion to the post of Taluka Development Officer on merits.

2. Being aggrieved by the said judgment of the trial court, the respondents filed Civil Appeal no. 20 of 1979 before the District Court at Rajkot. The District Judge confirmed the findings of the trial court, but partly allowed the appeal by holding that the deceased was entitled to have a declaration that the order dated 18th September, 1974 passed by the Development Commissioner promoting his juniors and denying his promotion is void and dismissed the cross-objections filed by the State Government. The following order was passed below cross-objections.

> "The present appeal is allowed. The plaintiff's suit for declaration that the order passed by the Vikas Commissioner bearing no. NNK/J/7/T.A.510 dated 18.9.74 detaining the plaintiff's promotion is void and illegal and deserves no notice and the defendant and their officers or servants are restrained from enforcing the said order in sofar as promoting the other officials junior to the plaintiff as T.D.O. and the defendant is hereby called upon to release the promotion of the plaintiff forthwith and he may be placed properly in the seniority list. And objections filed by the opponent are dismissed. "

The respondents being aggrived by the judgment and order of the District Judge filed Second Appeal no. 323 of 1980 before this Court. This Court by an order dated 22nd January, 1986 directed the Government to reconsider the case of the respondents and decide whether he was fit for promotion in the year 1974 when other persons junior to him were promoted. If it is found that the respondent was not fit for promotion in the year 1974, then it should reconsider further whether he was fit for promotion after 1974 whenever the occasion for promoting other persons arose. At that time, it was pointed out by the learned Assistant Government Pleader that three departmental inquiries were pending and the fourth inquiry was contemplated against him. But this Court held that the Government was bound to consider the case whether the person is fit for promotion or not. In the result, the Second appeal was allowed and the judgment and decree dated 30th May, 1980 passed by the Assistant Judge in Civil Appeal no. 20 of 1979 was quashed and set aside. The judgment and decree dated 20.2.1979 passed by the Civil Judge in Civil Suit no. 254 of 1974 was confirmed and the State Government was directed to consider the case of the petitioner within two months from the date of the order according to rules whether he

was fit to be promoted on 18.9.74 when the case of other persons was considered and that other persons junior to him were promoted and if it is found that the petitioner was not fit to be promoted on 18.9.74, then whenever the occasion for promotion arose after 1974, whether he was fit for promotion or not. If the departmental inquiries were pending against him, the Government would follow the procedure as laid down in Government Resolution no. SLT-1080-896-G-2 dated 23rd September, 1981.

3. I have carefully considered the contentions of the learned counsel for the parties. This petition has been filed for implementation of the order dated 22nd January, 1986 passed by this Court in the Second Appeal. If some order has been passed by this Court, a further petition cannot be filed for the execution of that order. Hence, at the most, the petitioner could have taken the legal remedy available to him. But the petition filed for the execution of the order passed by this Court on earlier occasion cannot be entertained. Moreover, in the present case, in the affidavit-in-reply filed by the Under Secretary to the Government of Gujarat, Panchayat and Rural Housing Department, it has been stated that the direction issued by this Court on 21st February, in Second Appeal no. 323 of 1980 has already been complied with. Pursuant to the said direction, a meeting of the Selection Committee consisting of Development Commissioner, Deputy Secretary to the Government and Director of Social Welfare was held on 11th March, 1986 to consider the case of the petitioner for promotion to the post of Taluka Development Officer with retrospective effect and the said committee considered the case of the petitioner for promotion to the post of Taluka Development Officer as on thedate on which the selection committee had considered the case of other persons junior to the petitioner for such promotion. Such consideration was made as on October, 1973, March, 1975, November, 1976, April, 1977, February, 1979, May, 1981, August, 1982, July, 1983, Septemb er, 1984 and March, 1985 and the petitioner was not found fit for promjotion to the post of Taluka Development Officer. As such, the orders of this Court have already been complied with. The petitioner has died in the year 1986 when he was in serving. His widow is being paid family pension calculated in accordance with rules and regulations made in this behalf. As such, in the facts and circumstances of this case as stated above, I do not find any merit in this petition. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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